

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 627 of 1985

with

CIVIL REVISION APPLICATION No 628 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  
2. To be referred to the Reporter or not? : YES
  
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  
5. Whether it is to be circulated to the Civil Judge? : NO

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JITENDRA CORPORATION

Versus

CHINUBHAI BHAICHANDRA SHAH

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Appearance:

1. Civil Revision Application No. 627 of 1985

MR BR SHAH for Petitioner

NOTICE SERVED for Respondent No. 1

2. Civil Revision Application No 628 of 1985

MR BR SHAH for Petitioner

NOTICE SERVED for Respondent No. 1

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CORAM : MR.JUSTICE P.B.MAJMUDAR

ORAL JUDGEMENT

1. Both these civil revision applications are directed against the common order passed by the appellate bench of the Small Causes Court, Ahmedabad in Civil Appeal Nos.398/80 and 399/80. The facts leading to the present civil revision applications are as under.

2. The petitioner is the original plaintiff of HRP Suit Nos.2471/76 and 5414/76. The opponent herein is the defendant of both the aforesaid suits. So far as the suit No.2471/76 is concerned, it is the case of the plaintiff that, it took on lease as the partnership business, land of T.P.S.No.3, Final Plot No.104/1 near Income Tax Office, Ashram Road, Ahmedabad. The said property is a large property namely Jitendra Chambers which consists of shops, offices and such other premises of different size. These premises were thereafter sold by the plaintiff to different persons having executed in favour of them registered sale deeds. As superstructures only were sold by the plaintiff to such purchasers, such purchasers have acquired long terms lease from its original owner. According to the plaintiff, the defendant is the tenant of the land of Shop No.7 at the rental amount of Rs.28/- per month and shop No.8 at the rate of Rs.25/- per month. The defendant had agreed to pay the rent from 15.7.1972 onwards and he also agreed to pay the interest on the rent due outstanding at the rate of 12% per annum. According to the plaintiff, the defendant was in arrears of rent from 1.9.1972 to 31.9.1976 amounting to Rs.1007/- and inspite of the demand notice, the same was not paid. The present suit is, therefore, filed to recover Rs.1007/- coupled with Rs.101/- being the amount of interest at the rate of 12% per annum.

3. The defendant resisted the suit on various grounds. According to him, lease deed was executed by the plaintiff in favour of its original owner and on such land, the property was erected and considering such payment of rent by the plaintiff to the original owner, the rent which the plaintiff recovers from all the occupants of the shops and offices is exorbitant and much excessive, and therefore, he prayed for fixation of standard rent. He also denied the liability to pay the taxes.

4. So far as the second suit, that is, 5414/76 is concerned, the same was originally filed as summary suit

No.4128/74. In the said suit it was stated by the plaintiff that the defendant is liable to pay the rent from 1.3.1973 to 31.7.1974 amounting to Rs.954/- plus interest of Rs.171/-. Initially, the said suit was filed as summary suit and thereafter, the plaint was returned for presentation to the proper court and thereafter, it was numbered as 5414/76.

5. The defendant also denied the said suit and disputed the standard rent.

6. Both the suits were heard together and the same were consolidated by the consent of the parties. The learned trial Judge ultimately fixed the agreed rent as the standard rent and the suits of the plaintiff were decreed accordingly.

7. Against the aforesaid decree of the trial court, the defendant - tenant preferred two appeals being Civil Appeal No.398/80 insofar as the decree passed in HRP Suit No.2417/76 is concerned. He also preferred another appeal being Civil Appeal No.399/80 as regards the decree passed in HRP Suit No.5414/76 is concerned. Both the appeals were heard together by the appellate court. The appellate court allowed both the appeals and the standard rent was fixed at Rs.16-57 ps. insofar as the standard rent for Shop No.7 is concerned and Rs.13-68 ps. insofar as shop No.8 is concerned.

8. The original plaintiff has preferred this civil revision application challenging the aforesaid order of the appellate bench in the aforesaid appeals.

9. At the time of hearing of these civil revision applications, the learned advocate for the petitioner is not present. The respondent has also not appeared though served.

10. On going through the plaint as well as the demand notice, this court is of the opinion that, looking to the valuation in the suit and the amount claimed in the suit, the appeals before the appellate bench may not be maintainable. Since the court was not assisted by the other side, Mr.S.M.Shah, learned advocate was requested to assist the court as *amicus curiae*. Mr.Shah has assisted the court insofar as the question of law about maintainability of the appeals before the appellate bench is concerned.

11. It is not in dispute that, in both the suits the prayer was for recovery of arrears of rent and there is

no prayer for possession in either of the suit. Insofar as suit No.2417/76 is concerned, Rs.1133/- was the amount found due towards arrears of rent and even the court fees was accordingly paid of the aforesaid amount. Second suit No.5414/76 is concerned, the amount is claimed at Rs.954/- and accordingly the subject matter of both the suits is less than Rs.2000/-.

12. Reference to section 29 is required to be made at this stage. Section 29 provides as under.:

29. Appeal - (1) Notwithstanding anything contained in any law, an appeal shall lie-

(a) in the City of Ahmedabad, from a decree or order made by the Court of Small Causes, Ahmedabad, exercising jurisdiction under section 28 to a bench of two judges of the said court which shall not include the judge who made such decree or order,

(b) xxxxxx xxxxxx xxxxxx

Provided that no such appeal shall lie from -

(1) a decree or order made in any suit or proceeding in respect of which no appeal lies under the Code of Civil Procedure, 1908 (V 1908);

(II) a decree or order made in any suit or proceeding (other than a suit or proceeding relating to possession) in which the plaintiff seeks to recover rent and the amount or value of the subject matter of which does not exceed -

(i) where such suit or proceeding is instituted in the City of Ahmedabad, two thousand rupees,

xxxxxx xxxxxxxx xxxxxx"

In view of the provisions of section 29(1)(b)(II), no appeal is provided from the decree or order made in any suit or proceedings in which the plaintiff seeks to recover rent and the amount of the value of the subject matter of which does not exceed Rs.2000/- where suits or proceedings are instituted in the city of Ahmedabad and the claim of rent in both the suits is less than Rs.2000/-. However, in view of the aforesaid provisions of the Bombay Rent Act, appeal under section 29 was not competent, and therefore, only revision application under subsection 3 of section 29 could have been entertained by the appellate court. In neither of the suits, there is a prayer for possession and only the amount of rent is claimed.

13. In that view of the matter, it seems that, appeals before the appellate bench was not competent. However, since the aforesaid point has not been taken before the appellate court, nor it is raised even in the revision memo, I deemed it fit to send the matter back to the appellate court to decide the aforesaid appeals again and the appellate court may also consider whether such appeals are competent before it or not. If, the appellate court comes to the conclusion that the appeals are not competent, and if, any request is made before the appellate court whether the same should be converted into revision applications, the said prayer may be considered in accordance with law.

14. In that view of the matter, order passed by the appellate court in Civil Appeal No.398/80 and Civil Appeal No.399/80 is set aside. The aforesaid appeals are restored on the file of the Appellate Bench, Small Causes Court, Ahmedabad. The appellant bench shall hear the said appeals and may decide on its own whether such appeals are competent or not. For that purpose, observations of this court may be considered as *prima facie* observations only as none of the parties are present before this court, the matter is remanded back as per what is stated above. Since the proceedings are very old one, the appellate bench is directed to dispose of the said appeals as early as possible and preferably by 31st August, 2001. R & P to be sent back forthwith. Rule is made absolute to the aforesaid extent with no order as to costs.

(P.B.Majmudar,J.)

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